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ABSTRACT

This paper summarizes the major pieces of education legislation passed in 1988 and 1989 in England, Wales, Northern Ireland, and Scotland. The Education Reform Act 1988, the Education Reform (Northern Ireland) Order 1989, and the Self-Governing Schools Etc. (Scotland) Act 1989 will all transform education in the 1990s. In all countries, the prime legislative aims were to devolve funding and staffing responsibilities to educational institutions and to change the size and composition of college governing bodies or councils. This paper concentrates on further education (FE), summarizing each piece of legislation and briefly noting its effects on FE. Key issues raised by the legislation involve the nature of future college/authority relationships; future relationships among college principal, college management, and governing body; the development of governors or councilors; increased plant bargaining between college management and teaching and other unions; possible confusion in staffing responsibilities; colleges' responsiveness to clients' needs; the future of post-16/tertiary reorganization; governor and council or accountability; and the possibility of corporate status. (25 references) (MLH)

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Education reform legislation in the UK: a summary

J A Graystone

The Staff College

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Mendip Papers

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INTRODUCTION

This paper summarises the major pieces of education legislation passed in 1988 and 1989 in England and Wales, Northern Ireland and Scotland. The Education Reform Act 1988, the Education Reform (Northern Ireland) Order 1989, and the Self-Governing Schools Etc. (Scotland) Act 1989 will transform education in the 1990s.

In all countries the prime aims of the legislation were to devolve responsibilities over funding and staffing to educational institutions and to change the size and composition of college governing bodies or councils.

This paper concentrates on further education (FE). Each piece of legislation is summarised and its impact on FE briefly analysed. It is intended as a reference for those interested in comparing the educational changes throughout the United Kingdom.

THE EDUCATION REFORM ACT 1988

Background

The Education Reform Act (ERA) received Royal Assent on 29 July 1988. Although much of the debate inside and outside Parliament concentrated on schools, there have been major implications for further education. The term 'college' is not used in the Act.

The FE sections of the Act can be described as primarily enabling legislation. Their interpretation became clearer with the publication of regulations, Department of Education and Science (DES) or Welsh Office (WO) circulars and administrative memoranda. The most important circulars have been DES **Circular 8/88** (WO **37/88**) on the governance of colleges, DES **Circular 9/88** (WO **38/88**) on schemes of delegation and articles of government, and DES **Circular 13/89** (WO **Circular 37/89**) on the employment responsibilities of governors.

When first published on 20 November 1987, the Bill, often referred to as GERBIL (the Great Education Reform Bill), had 147 sections. These had increased to 238 by the time the Bill received Royal Assent and became The Education Reform Act. There were 220 hours of debate in the Commons and 154 hours in the Lords.

During the Bill's passage through Parliament, the Government put down numerous amendments, a major example being the proposal to abolish the Inner London Education Authority (ILEA). During the House of Commons committee stage, the Government tabled 45 amendments to part II chapter III (the FE sections). Part II originally contained 33 sections (Sections 81-113); this number had increased to 42 sections (120-161) in the Act.

Primarily the Act extends to England and Wales only, although provisions relating to universities extend to Scotland.

Part II (chapter II) broadly follows the White Paper **Higher education: meeting the challenge** and Part II (chapter III) the DES Consultation Paper **Maintained further education: financing, governance and the law** .

Under the Act the Secretary of State for Education and Science has been given over 300 new powers, mainly through statutory instruments.

This section of the paper provides general background information on ERA. It lists the titles of sections of ERA, outlines the major proposals affecting the whole education service and summarises the FE sections. It examines the impact of ERA and outlines key issues for FE. The main sections of the Act are listed in **Figure 1**.

The main points of The Education Reform Act 1988

The main points of the Act, in respect to compulsory and post-compulsory education, can be summarised as follows:

- an end to artificial limits on parents' first choice of school;
- control of school budgets to be handed over to governors of secondary schools and larger primary schools;
- a national curriculum with three compulsory subjects, English, maths and science, and seven foundation subjects;
- testing for all children at seven (or thereabouts), 11, 14 and 16;
- religious education to be given special status equal to that of a foundation subject;
- a compulsory daily act of collective worship which should be, in the main, Christian;
- governors of schools with more than 300 pupils eligible to apply for grant-maintained status (opting out from local education authority control) subject to ballot of registered parents;
- schools to be allowed to charge for certain activities;
- polytechnics to be established as corporate bodies independent from LEA control;
- Polytechnics and Colleges Funding Council (PCFC) to be set up to administer government funds;
- control of further and higher education college budgets to be devolved to governing bodies; size and composition of governing bodies to be reformed;
- the Inner London Education Authority to be abolished and education to be handed over to the Inner London boroughs;
- a University Funding Council to replace the University Grants Committee.

Since the Act, some of the above have been amended. For example, the size of school no longer influences eligibility to apply for grant-maintained status.

Figure 1: Summary of the sections of The Education Reform Act 1988
(NB Parts II and IV are broken down into more detail than Parts I and III)

Part I Schools (sections 1-119)

Chapter
- I The curriculum (1-25)
- II Admission of pupils to county and voluntary schools (26-32)
- III Schools - finance and staff (33-51)
- IV Grant maintained schools (52-104)
- V Miscellaneous - City colleges (105)
  - Charges in maintained schools (106-111)
  - Miscellaneous (112-116)
  - General and supplementary provisions (117-118)
  - Interpretation of part I (119)

Part II Higher and further education (sections 120-161)

Chapter
- I Local authority functions with respect to higher and further education (120)
- II Reorganisation of provision and funding of higher education (121-138)
  - The higher education corporations (121-128)
  - Designation of certain institutions for funding by the PCFC etc. (129-130)
  - New arrangements for funding higher education (131-134)
  - Supplementary (135-138)
- III Finance and government of locally funded further and higher education (139-155)
  - Further and higher education funding schemes (139-147)
  - Appointment and dismissal of staff during financial delegation (148-149)
  - Withdrawal of delegated powers (150)
  - Government and conduct of maintained further and higher education institutions (151-152)
  - Government of designated assisted institutions (153)
  - Miscellaneous and supplementary (154-155)
- IV Miscellaneous and supplementary (156-161)

Part III Education in Inner London (sections 162-196)

Part IV Miscellaneous and general (sections 197-238)

Establishment and functions of education assets board (197-201)
Academic tenure (202-208)
Grants (209-213)
Unrecognised degrees (214-217)
Miscellaneous provisions (218-226)
Wales (227-229)
Supplementary (230-238)

Relevant schedules

Schedule 2 The curriculum and assessment councils
Schedule 5 Transition to grant maintained status
Schedule 6 Courses of higher education
Schedule 7 The higher education corporations
Schedule 8 The funding councils and the assets board
Schedule 9 Determination of full-time equivalent enrolment numbers
Schedule 10 Supplementary provisions with respect to transfers
Schedule 11 The university commissioners

New definition of FE

Section 120(2) replaces section 41 of the 1944 Education Act. Section 41 now reads:

> It shall be the duty of every LEA to secure provision for their area of adequate facilities for further education, i.e.:
>
> a) further education means full- and part-time education and training for persons over compulsory school age (including vocational, social, physical and recreational training) other than higher education;
>
> b) organised leisure-time occupation provided in connection with a).

Schedule 6 defines advanced courses (those with a standard higher than A level) as higher education. These include the Diploma of Higher Education; Higher National Diploma or Certificate of the Business Technician Council; Diploma in Management Studies; Certificate of Education.

All other provision for those who have left school is classified as further education.

S120(1) states that an LEA no longer has a duty to secure provision for their area of facilities for higher education; but has power to do so.

Delegation schemes

Below are the sections of the Act which concern delegation schemes.

S139 states that every LEA shall be required to prepare a scheme to be approved by the Secretary of State to provide for:

> a) determination of the share of the budget for each institution covered by their scheme; and
>
> b) delegation of the management of an institution's budget share for any year to the governing body of the institution if covered by the scheme.

S140(4) states that the LEA must consult the governing body about the scheme.

S142(2) states that the LEA must provide institutions with a budget agreed under the scheme.

The scheme must include a formula to take account of student numbers and institutional variations (S143(1)). This formula shall not only take into account student numbers but also other factors affecting the needs of individual institutions (S143(3)).

The governing body may spend the sum as they think fit or delegate this to the principal (S142(6)).

Delegation only applies to colleges with 200 or more full-time equivalent (FTE) students - unless varied by the Secretary of State (S144).

The scheme must be published (S147).

Delegated powers may be suspended or withdrawn by the LEA, subject to appeal to the Secretary of State, if there is persistent failure by the governing body to comply with the requirements of the scheme or if finances are not managed satisfactorily (S150).

Governing bodies

Below are the sections of the Act which cover the powers, duties and constitution of the new governing bodies.

The governing body has delegated powers to appoint full- and part-time staff and to determine their duties and grading; and to require the LEA to remove from college staff whom they consider should no longer work there (S148(3)).

When the selection of senior staff is involved, the chief education officer of the LEA must be consulted before any decision is made (S148(8)).

The LEA meets any costs arising from dismissals or premature retirement of staff; the amount to be determined by the governing body; this amount may not be deducted from the college budget (S149(4)).

Instruments of government setting out the constitution (the instruments) and instruments setting out the conduct of the institution (the articles) are to be approved by the Secretary of State (S151(1-2)).

S152(1) states that a governing body may not be larger than 25 members, of whom:

- (S152(1a)) not less than 50 per cent of members to be:

  a) engaged or employed in business, industry or any profession or in any other

field of employment relevant to the activities of the institution or to represent persons so engaged or employed. (NB elected members or employees of the LEA or local authority are excluded from this category.); and

b) co-optees.

- not more than 20 per cent to represent LEA (S152(1b)).

Articles of government shall determine the functions of the LEA, governing body, principal and academic board, and regulate the constitution and function of the governing body's committees (S152(5)).

The LEA shall appoint to the governing body persons nominated by bodies determined by the LEA and approved by Secretary of State; and in determining these bodies the LEA shall consult the governing body, bodies representing business or industrial interests, the professions and trade unions (S152(8-9)).

Corporate status

When it is proposed to form a company to conduct any institution providing full-time education maintained by the LEA, the proposed memorandum and articles of association should be approved by Secretary of State (S156(5)).

The impact of the Act on FE

The terms non-advanced further education (NAFE) and advanced further education (AFE) are replaced by the simple terms 'further education' (FE) and 'higher education' (HE).

Further education now has a clearer legal identity. Before the Act, much of FE provision was *ultra vires*. (Under the 1944 Education Act, LEAs were required to draw up schemes for approval to the Education Minister, but few did this.)

The Act gives the LEA responsibility for the strategic planning of provision although the word 'strategic' is not used in the Act. LEAs will draw up a delegation scheme to be approved by the Secretary of State together with articles and instruments of government of their colleges.

The LEA will play four key roles:

- straightforward regulation through financial controls;
- co-ordination and leadership of the service;
- advice and support to colleges;
- strategic planning of post-16 provision.

Governing bodies will have responsibility for spending monies within the budget laid down by the LEA and for appointing staff. They will be able to:

- vire across expenditure headings;
- carry forward surpluses (and deficits);
- have incentives to earn additional income by providing courses and other services and facilities;
- appoint and dismiss staff;
- determine staffing levels.

College budgets will be determined on the basis of a formula which takes account of unit costs and weighted student numbers. Colleges will be able to supplement their income from other sources without penalty.

Timetable

Figure 2 shows the timetable leading up to and following the Act.

Differences between ERA and the DES Consultation paper - Maintained FE: financing, governance and the law

The key differences between the Education Reform Act 1988 and the Consultation Paper (upon whose recommendations parts of the Act were based) can be summed up as follows.

- Under ERA governors nominated by the LEA or neighbouring educational institutions are not excluded from taking the chair of the governing body.

- Under ERA a governing body is not likely to have parent representatives.

- The possibility of future corporate status for further education institutions within the control of the LEA and with LEA agreement as set out in the consultation paper is given less emphasis in ERA.

Figure 2: Timetable for the implementation of The Education Reform Act 1988

April 1987	Publication of the White Paper **Higher education: meeting the challenge** stating intention to grant corporate status to polytechnics and certain institutions of higher education and to set up PCFC.
May 1987	General election.
August 1987	Publication of the DES Consultation Paper **Maintained further education: financing, governance and the law** (Welsh Office equivalent paper entitled **Maintained further and higher education in Wales. Reform of finance, governance and law**). Responses required by October 1987. The paper set out proposals to delegate budgets to colleges and to change composition of governing bodies.
November 1987	Publication of the Education Reform Bill.
April 1988	Publication of **Local management of FE colleges: delegation schemes and articles of government** (draft guidance notes; responses required by 15 July 1988).
May 1988	Publication of **Governance of maintained further and higher education colleges** (draft guidance notes; responses required by 22 July 1988).
July 1988	Education Reform Act receives Royal Assent.
September 1988	Publication of DES **Circular 8/88** (WO **Circular 37/88**)
September 1988	The DES issue Guidance notes on corporate status.
September 1988	Publication of DES **Circular 9/88** (WO **Circular 38/88**)
June 1989	Publication of DES **Circular 13/89** (WO **Circular 37/89**)
June 1989	Deadline for submission of revised college instruments of government (not ILEA).
September 1989 to March 1990	New college governing bodies in place (not ILEA).
September 1989	Deadline for submission of draft schemes and revised college articles of government for LEAs (not ILEA).
April 1990	Approved schemes and articles of government for as many LEAs as possible.
June 1991	Deadline for submission of revised college instruments of government for LEAs in Inner London.
September 1991 to March 1992	New governing bodies set up in Inner London colleges.
September 1991	LEAs in Inner London submit schemes for approval.
April 1992	Approved schemes and articles of government for Inner London education authorities.
April 1993	Deadline for full implementation of schemes.

THE EDUCATION REFORM (NORTHERN IRELAND) ORDER 1989

Background

The **Draft Order in Council for Education Reform (Northern Ireland)** was published in June 1989 and followed the publication of the Department of Education for Northern Ireland (DENI) consultation paper **Education in Northern Ireland: proposals for reform** in March 1988. As with the Education Reform Act 1988 covering England and Wales and the Self-Governing Schools etc. (Scotland) Act 1989, the Order gives devolved responsibilities to educational institutions.

The Draft Order, approved by both Houses of Parliament, was presented to the Privy Council on 19 December 1989 under the Northern Ireland Act 1974. The Order is now cited as the Education Reform (Northern Ireland) Order 1989 and has the force of a statutory instrument.

Guidance was issued to education and library boards in November 1990 and entitled **Education Reform (Northern Ireland) Order 1989: local management of colleges of further and higher education** (LMC)

The Order has 167 articles set out in 10 parts. There are 10 schedules. 20 articles are devoted to further and higher education with a further seven impacting on further and higher education. The rest, with the exception of three articles covering the introduction and the duty of the Department of Education, are concerned with schools.

Schedule 7 which describes courses of higher education is the only schedule covering further and higher education exclusively.

The order is shorter than the Education Reform Act (238 sections) but longer than the Scotland Act (83 sections).

The parts are summarised in **Figure 3**.

Figure 3: Summary of the main parts of the Education Reform (Northern Ireland) Order 1989

Part I	**Introductory** Title and commencement (Article 1) Interpretation (2)
Part II	**General duty of the Department of Education** General duty of the department (3)
Part III	**The curriculum** Duties with respect to the curriculum (4) Principal provisions (5-11) Religious education (12-13) Special cases (14-17) The Northern Ireland Curriculum Council and the Northern Ireland Schools Examinations and Assessment Council (18-28) Miscellaneous and supplementary (29-35)
Part IV	**Admission of children to grant aided schools (36-45)**
Part V	**Financing schools** Financing of controlled and maintained schools (46-59) Financing of voluntary grammar schools (60-61) Miscellaneous (62-63)
Part VI	**Integrated Education** **Chapter I** General functions of Department and boards (64) **Chapter II Grant-maintained integrated schools** Duty of Department to maintain grant-maintained integrated schools (65-67)

Figure 3: Summary of the main parts of the Education Reform (Northern Ireland) Order 1989 (continued)

Procedure for acquisition of grant-maintained integrated status (68-73)
Proposals for alteration etc. of schools eligible for grant-maintained integrated status (74)
Transfer of property and staff (75-76)
Financing of grant-maintained integrated schools (77-78)
Making of significant change to grant-maintained integrated schools (79)
Discontinuance of grant-maintained integrated schools (80-81)
Winding up and disposal of property (82-84)
Miscellaneous and supplementary (85-87)

Chapter III Controlled integrated schools
Management of controlled integrated status (88-89)
Procedure for acquisition of controlled integrated status (90-93)
Proposals for alteration etc. of schools eligible for controlled integrated status (94)
Transfer of property and staff (95-96)
Significant changes to controlled integrated schools (97)
Miscellaneous and supplementary (98-99)

Part VII — **Further and higher education**
Functions of boards with respect to further and higher education (100-101)
Management of institutions of further education (102-105)
Further and higher education funding schemes (106-113)
Provisions relating to staff during financial delegation (114-116)
Withdrawal of delegated powers (117)
Miscellaneous (118-119)
Interpretation (120)

Part VIII — **Schools general provisions**
Chapter I
Management of grant aided schools (121-126)

Chapter II
Charges in grant aided schools (127-138)

Chapter III
Community use of school premises (139-140)

Part IX — **The Council for Catholic Maintained Schools (141-146)**

Part X — **Miscellaneous and supplementary**
Training (147-149)
Miscellaneous (150-153)
Miscellaneous amendments to the principal order (154-161)
Supplementary (162-167)

Relevant schedules

Schedule 3 — The Northern Ireland Curriculum Council and the Northern Ireland Schools Examinations and Assessment Council

Schedule 4 — Provisions relating to the staff of schools with delegated budgets

Schedule 5 — Membership of board of governors of grant-maintained integrated schools

Schedule 6 — Transition to grant-maintained integrated status

Schedule 10 — Repeals

Main points of the Order

Duties of education and library boards

Article 100(2) defines further education as:

a) full-time and part-time education for persons over compulsory school age (including vocational, social, physical and recreational training);

b) organised leisure-time occupation provided in connection with the provision of such education.

This is identical to that set out in ERA S120(2)

Each education and library board (equivalent to the local education authority in England and Wales and the education authority in Scotland) has responsibility for securing the provision of adequate facilities for further education for its area (Article 100(1)).

A board shall have power to provide facilities for higher education (Article 101(1)).

Management of institutions of further education

Article 102(1) states that the board shall make provision for the management of every institution of further education by a governing body. There should be an instrument and articles of government for each institution which have to be approved by the Department of Education for Northern Ireland (Article 102(3) and (4)). The articles give powers to governing bodies to appoint 'teachers and other staff' and for carrying out other specified functions (Article 102(9)).

Instruments of government

Article 103(1) describes the instrument of government of an institution of further education. The governing body should consist of not more than 25 members of whom:

- not less than half shall be selected from employment interest governors;
- not more than one-fifth selected and appointed by the board of whom not more than half should be members of district councils;
- not more than one-tenth shall be teachers elected by teachers at that institution; and
- at least one person co-opted by other members of the governing body.

Articles of government

Under Article 104 the articles of government of an institution of further education should determine the functions to be exercised by the board, the governing body, the principal and the academic board. Section 104(3) states that it should be the duty of the governing body to determine its policy in relation to the course of study to be provided and to make a written statement of that policy.

Educational provision

Each board has to draw up a plan for the educational provision to be made by institutions of further education in its area and may be required to publish information regarding the education provision made by an institution of further education and the educational achievements of students at the institution (including the results of examinations, tests) (Article 105 (1) and (6)).

Funding schemes

Articles 106-113 set out the procedures for the funding by boards of further and higher education institutions.

Each board has a duty to prepare a delegation scheme which shall determine the share of the budget for each institution of further education situated in the area of the board and the delegation of the management of the institution's budget share to the governing body of the institution (Article 106 (1) - (3)).

Each scheme should set out the principles and procedures to be applied by the board in planning the educational provision (Article 106(3)) and should be submitted to the Department for approval after consultation with the relevant governing bodies (Article 107 (1) and (4)).

It is the duty of the board to provide funding for an institution in line with the delegation scheme (Article 109(2)) and the governing body may spend this money as it thinks fit and delegate this to the principal (Article 109(5)).

Article 110(1) states that the budget share of an FE institution for any financial year should be determined by the application of a formula to enable the overall budget to be divided between institutions. It should take account of student numbers and any other relevant factors subject to variations (Article 110(3)).

The board shall delegate to the governing body of the relevant institution the management of the budget (Article 111(1)).

Articles 112 and 113 state that each delegation scheme shall be published and that the board should publish details of expenditure incurred in a financial year at the end of that year.

Staffing

Under Article 114(3) the governing body is given responsibility for determining what staff (both full- and part-time) are required for the purposes of the institution. Governing bodies will also be able to notify the board when they decide that someone should cease to work at the institution. In the case of removing senior staff from work, the governing body will be required to consult the chief education officer of the relevant board (Article 114(4) and (5)).

The governing body shall also have responsibility for the conduct and discipline of staff and any grievance procedures (Article 114(7)).

Costs arising from the dismissal or premature retirement or from the securing of resignation of any member of staff shall not be met from the institution's budget share for any financial year unless the board has good reason for deducting these costs from that share (Article 115(4)).

The Department may 'by order make such modifications in any statutory provision relating to employment' (Article 116(1)). As in England and Wales (DES Circular 13/89, WO Circular 37/89) this enables the Department to clarify the power of the governing body in relation to staffing so that the governing body will be treated legally as if it was the employer.

Withdrawal of delegated powers

Article 117(1) outlines the procedures by which delegated powers my be withdrawn from educational institutions. Such withdrawal may take place where the governing body has:

- been guilty of substantial or persistent failure to comply with the scheme; or
- has not managed the budget 'in a satisfactory manner'.

The Article sets out the steps which must be taken by the board and the procedures to be followed before withdrawal of powers takes place.

Miscellaneous

Under Article 118(1) and (2) the Department has powers to make regulations on the following:

- the curriculum and timetable in institutions;
- the prohibition of any book or teaching material of which the Department does not approve;
- the level of fees charged to students;
- the keeping, disclosure and transfer of educational records about students.

Under Article 119(1) the governing body has the power to make charges for any of its facilities, goods or services to any other institution, school, body or person.

Training

Article 147(1) and (2) provides for the additional training of teachers employed in further education institutions. The board has powers to pay for teachers to undergo this training and for their travelling and other allowances. In addition, the board has responsibility for training governing body members (Article 148(1)).

Each board should submit to the Department a programme for the further training of teachers after consulting the governing body (Article 149(1)).

Review of performance of teachers

Article 151(1) gives powers to the Department to require employing authorities to review regularly the performance of teachers in discharging their

duties and to require governing bodies to provide assistance in this (Article 151(2)).

Impact of the Order on FE

The DENI consultation paper **Education in Northern Ireland: proposals for reform** (1988) outlined the Government's intention to reform the education service in Northern Ireland. The paper states that in the further education sector there is scope for greater efficiency in the deployment of resources, particularly at college level. There is also a need for greater flexibility on the part of colleges in responding to demands from local industry and commerce as well as to changes emerging at national level in relation to, for example, open learning and the work of the National Council for Vocational Qualifications. Colleges also need to improve their ability to market particular services and courses.

The way forward for further education, suggested in the paper, was to be 'greater delegation to institutions of further education in the financial management of each college and a greater role in management for local industrialists and others with special expertise'.

The Education Reform (Northern Ireland) Order puts these principles into practice by delegating financial and staffing powers to governing bodies and changing the size and composition of governing bodies.

The Order is similar in scope to ERA in England and Wales and the Self-Governing Schools etc. (Scotland) Act. However, the education system in Northern Ireland differs somewhat from that in England, Wales and Scotland. The Order has to be viewed in that context.

The composition of governing bodies in Northern Ireland is clearly defined. The Order sets the maximum size of governing bodies at 25 (in England and Wales it is 25, in Scotland 20), lays down the proportion of employment interest governors and, unlike ERA and the Scotland Act, states that not more than one-tenth of governors shall be teachers.

Each board has to submit a scheme to DENI for the delegation of financial powers and responsibilities to colleges. The scheme should take account of the board's policy on post-16 provision in its area, total resources available for FE provision and the amount to be held back for centrally determined expenditure. It should also include a formula for calculating budgets, taking account of factors such as student intake numbers and course provision.

DENI has powers to obtain information on the educational achievements of students at the institution including examinations and tests and to prohibit the use of any book or other teaching material. It also has powers to make regulations on the keeping, disclosure and transfer of educational records. The Department of Education and Science and the Scottish Education Department do not have these powers.

DENI may require employing authorities to carry out performance appraisal of teachers. This is similar to Section 49 of the Education (No 2) Act 1986 covering England and Wales and Section 70 of the Self-Governing Schools etc. (Scotland) Act.

The Order represents a major change in the direction of further education in Northern Ireland. Institutions will have devolved responsibilities for budgets and staffing; the Department will continue to have central responsibilities. The future role of the boards and their relationships with governing bodies will be crucial in determining the success of the national changes in the FE service in Northern Ireland.

Timetable

Figure 4 shows the timetable for the implementation of the Order.

Figure 4: Timetable for the implementation of the Education Reform (Northern Ireland) Order 1989

May 1987	General election
March 1988	Publication of **Education in Northern Ireland: proposals for reform**
June 1989	Publication of Draft Order in Council for education reform (Northern Ireland)
December 1989	Education Reform (Northern Ireland) Order presented to Privy Council
November 1990	Publication of **Education Reform (Northern Ireland) Order 1989: local management of colleges of further education (LMC). Guidance on schemes for financing (by boards) of further and higher education**
March 1991	Deadline for submission of draft schemes

THE SELF-GOVERNING SCHOOLS ETC. (SCOTLAND) ACT 1989

Background

The Self-Governing Schools etc. (Scotland) Bill was laid before Parliament on 15 February 1989 and received Royal Assent on 16 November 1989. Those concerned with the low profile of further education may well find it ironic that FE is referred to only as 'etc.' in the title, although the Act itself has had a profound effect on the post-16 education system in Scotland.

The Act implements proposals set out in the Scottish Education Department's consultative papers **Commercial activities in local authority further education colleges in Scotland** (1986) and **Proposals for improving the management of further education colleges in Scotland** (1987). It has been supplemented by the SED consultative paper **The college control principle**, published in 1989. This latter paper sets out the key principle of the Act:

> ..as far as possible everything which affects college authorities should come within the control of the college council (or, on a daily basis, the college principal) (part 14).

The SED **Circular 8/90** explains the sections of the Act dealing with further education colleges. The Self-Governing Schools etc. (Scotland) Act gives devolved responsibilities to college councils and changes their composition.

Its 83 sections (an increase from the 72 in the original Bill) are set out in three parts and 11 schedules. The parts are summarised in **Figure 5.**

Figure 5: Summary of the parts of the Self-Governing Schools etc. (Scotland) Act 1989

Part I	**Self-governing schools**
	Duty to maintain self-governing schools (Section 1)
	Government (2-9)
	Parental rights etc. (10)
	Fees, charges, books etc. (11)
	Management of denominational schools (12)
	Procedure for acquisition of self-governing status etc. (13-20)
	1980 Act and self-governing status (21)
	Staff (22-24)
	Benefits and services for pupils (25)
	Finance (26-29)
	Change in characteristics, discontinuance etc. (30-32)
	Withdrawal of grant (33)
	Miscellaneous (34-35)
	Property (36-47)
	Provision of information (48)
	Educational endowments (49)
	Winding up (50-53)
Part II	**Further education**
	College councils (54-60)
	Supply of goods and services (61-63)
	Discontinuance of colleges of further education (64)
	Formation of companies to manage colleges of further education (65-66)
	Pay and conditions of service (67)
Part III	**Miscellaneous and general**
	Miscellaneous (68-77)
	General (78-83)

Of the 83 sections 14 are devoted to further education; the 11 schedules cover schools exclusively.

The Act is considerably shorter than the Education Reform Act 1988 (238 sections, of which several cover Scottish universities) and the Education Reform (Northern Ireland) Order 1989 (167 Articles).

This part of the paper describes the sections of the Act affecting further education.

Main points of the Act

College councils

Under Section 54(1) every education authority is required to set up a college council. The college council is equivalent to the governing body in England, Wales and Northern Ireland.

The members of a college council shall be appointed after consultation with appropriate organisations including employers and trade unions, industrial and other organisations which are 'representative of the interests relevant to the work of the college' (Section 54(4)).

The total size of the college council shall not exceed 20. Of these, not less than half should be selected by employer organisations (including trade unions) and not more than one-fifth should be members or employees of a local authority. The college principal will be an *ex-officio* member (Section 54(5)).

Section 55 states that the chair is elected by the college council but can be neither an employee of the education authority nor a student.

Delegation schemes

Various functions of the authority shall be delegated to the college council (Section 56(1)). These functions include the management, supervision and financial control of the college (Section 56(1)(a)). The college council may have delegated powers to select persons to be employed at the college and have responsibility for career development including redeployment of members of staff (Section 56(3)). It will not be able to enter into contracts of employment with or to dismiss college staff (Section 56(2)(a)).

Financing the college councils

Section 57 states that the education authority shall determine for each college, after consultation with the college council, the size of the budget for carrying out the council's functions under the delegation scheme and for meeting any administrative and other expenses of the council (Section 57(1)). The authority may increase or reduce this sum (Section 57(4)).

The education authority has to provide a statement setting out the money paid in the previous financial year to the college for its running costs and capital expenditure (Section 57(5)).

Members of the college council shall not incur any personal liability 'in respect of anything done in good faith' in carrying out their functions (Section 58(2)) and a college council shall comply with any reasonable request from their education authority for information relating to their functions (Section 58(4)).

Section 59 outlines the conditions under which an education authority may suspend the delegation of the functions of the college councils. These cover the failure to:

- comply with conditions imposed under the scheme;
- comply with the legislation;
- ensure that 'any duty of the authority under statute or any rule of law is complied with' (Section 59(2)).

Section 59 also describes the procedures for suspension, appeals and review.

An education authority may pay allowances to any member of a college council for work conducted for the college council. These payments relate to travel and subsistence and are similar to those paid to members of education authorities (Section 60).

Supply of goods and services

Sections 61 to 63 cover the supply of goods and services and the setting up of companies.

An education authority has powers to form a company under Section 1 of the Companies Act 1985 and to make loans to those companies (Section 61(1)). The supply of these goods and services must not be less than the open market value (Section

61(2)). Section 62 defines goods and services. Section 63 sets out the arrangement for making loans.

Discontinuance of a college

A college council shall cease to exist when their college is discontinued or amalgamated (Section 64(1)). All property, rights and obligations of the council shall pass:

- on discontinuance of a college to the education authority;
- on amalgamation, to the college council of the amalgamated college;
- where the college ceases to be managed by an education authority to the new managers of the college (Section 64(2)).

Formation of college companies

Sections 65-66 outline the procedures for setting up companies to manage colleges of further education. Section 65(1) states that an education authority, with the consent of the Secretary of State, may form companies under Section 1 of the Companies Act 1985 for the purpose of 'transferring to any such company responsibility for managing a college or colleges of further education'. There may be transferred to this company responsibility for managing the college, property rights and liabilities, the employment of staff employed at the college or colleges, and the making of payments by the authority for providing further education (Section 65(2)).

Section 66 sets out the procedure for transferring staff to the company.

Pay and conditions of service

Section 67 abolishes the committee set up to consider pay and conditions of teaching staff employed in providing further education under Section 90 of the 1980 Education (Scotland) Act. No new machinery is proposed.

Technology academies

Section 68 covers the setting up of technology academies by agreement with the Secretary of State for Scotland. The academies are broadly akin to city technology colleges in England and Wales. The technology academies will provide secondary education and have a broad curriculum with an emphasis on science and technology. They will be outside education authority control.

Appraisal of teachers

Section 70 empowers the Secretary of State to ensure that education authorities regularly appraise the performance of teaching staff. Schemes of appraisal must be approved by the Secretary of State.

Definition of colleges of further education

Section 80(1) states that a college of further education is 'an educational establishment under the management of an education authority for the provision of any form of further education'.

Impact of the Act on FE

As stated previously, the Self-Governing Schools etc. (Scotland) Act 1989 is similar to the Education Reform Act 1988 and the Education Reform (Northern Ireland) Order 1989. Under the Scottish Act the composition of college councils is changed, and the powers and responsibilities of college councils are increased.

The Scottish education system differs somewhat from that of England and Wales and Northern Ireland. The Act has to be viewed in that context.

In Scotland the total number of members of a college council must not exceed 20. (In England, Wales and Northern Ireland the maximum size of governing body is 25.) There is no minimum size. At least half the council must be selected from employment interest groups. This large number is 'allocated to employer members because colleges of further education are primarily, though not solely, concerned with vocational education and training' (SED Circular 8/90). Other than students and the principal, council members serve for a four year period. However, half the members of the first college council will serve for only two years - they will be chosen by agreement or by lot. The council will then be reconstituted biennially. Education authority employees and students are barred from appointment as chair of college councils.

College councils should be set up in every college from 1 August 1990 except those to be administered as a school or where the 'average student load' is less than 100.

One significant difference between the Act in Scotland and its English and Welsh and Northern

Irish counterparts is that college councils do not have the power to enter into contracts of employment with or to dismiss staff. The education authority remains the employer though the selection of staff and career development can be delegated to the college council.

College councillors do not receive a salary or loss of earnings. However, education authorities can pay travel and subsistence allowances up to certain limits for attendance at college council, council committee meetings or working visits to the college.

Individual members of college councils do not incur personal liability for their decisions as long as these are made 'in good faith'.

The Act does not set out the methods by which colleges will be funded. Unlike ERA and the Northern Ireland Order there is no mention of formula funding. However, funding systems are discussed in **The college control principle** (1989) which suggests unit cost budgeting.

There is a more detailed section on the setting up of companies to manage colleges than under ERA - there is no mention of these companies in the Northern Ireland Order. Education authorities are given increased powers to engage in commercial activities through their colleges. Commercial activities must not be to the detriment of further education at the college and firms may not be undercut unfairly. Corporate colleges can own property and employ staff. But corporate status does not involve privatisation or opting out. Corporate colleges remain within the local authority sector for financial and planning purposes. Most of their funds will continue to come from the education authority which would also receive the corporate college's development plan. There is a strong possibility that Scottish colleges will be encouraged to become corporate in the 1990s. These developments follow the 1986 SED consultative paper.

The Act states that the mechanism by which pay and conditions of teaching staff are decided is henceforth abolished. This may lead to increased bargaining at college level.

The SED consultation paper **Staff development and appraisal in further education in Scotland** (1990) sets out a suggested framework covering staff development, appraisal, career review and mechanisms for appeals. It emphasises that college development plans, which all FE colleges will be required to produce under new legislation, should include a clear statement of staff development and appraisal policies. No date is given for the introduction of schemes.

The Scottish Act represents a major change in the direction of further education in Scotland. College councils will have major devolved responsibilities while the Scottish Education Department continues to have central responsibilities. The future role of education authorities and their relationships with their colleges are problematic.

Timetable

Figure 6 shows the timetable for the implementation of the Act.

Figure 6: Timetable for the implementation of the Self-Governing Schools etc. (Scotland) Act 1989

May 1987	General election
August 1989	Publication of the consultation paper **The college control principle**
February 1989	Publication of the Self-Governing Schools etc. (Scotland) Bill
November 1989	Self-Governing Schools etc. (Scotland) Act receives Royal Assent
April 1990	Publication of SED Circular 8/90 **Self-Governing Schools etc. (Scotland) Act 1989. Establishment and composition of new further education college councils**
April 1990	Publication of SED Circular 5/90 **Self-Governing Schools etc. (Scotland) Act 1989. Part II - section 67, Part III - miscellaneous and general**
April 1990	Publication of SED Consultation paper **Staff development and appraisal in further education in Scotland**
August 1990	New reconstituted college councils in place
October 1990	Date from which education authority delegates functions to college councils

CONCLUSION

The Education Reform Act 1988, the Education Reform (Northern Ireland) Order 1989, and the Self-Governing Schools etc. (Scotland) Act 1989 are major pieces of legislation. They are intended to set the framework for education into the 21st century in England, Wales, Scotland and Northern Ireland. A number of key issues arising from the legislation now face FE.

Some key issues

These are some of the key issues for FE throughout the UK arising from the various education reforms.

Future college/authority relationships - New ways of working together will need to be developed. The authority (LEA/education and library board/college council) will need to redefine its role.

Future relationships between college principal, college management and governing body - The new responsibilities given to governing bodies/ college councils emphasise the important working relationship between the Chair of the governing body or college council and college senior management.

Development of governors or councillors - The new governors or councillors will need support in carrying out their new roles and responsibilities. Development programmes should be planned with the full co-operation of governors or councillors.

Increased plant bargaining between college management and teaching and other unions - Any move away from national pay bargaining will require colleges to be prepared to take part in local plant bargaining.

Who is the employer? - Both the authority and governing body have staffing responsibilities. There may be confusion which is likely to be resolved by law through industrial tribunal cases.

Responsiveness of colleges to the needs of clients - Marketing will continue to be central to the work of colleges.

Future of post-16/tertiary reorganisation - Schools are able to opt out of authority control and this will threaten post-16 planning and tertiary reorganisation.

Accountability of governors or councillors - To whom will governors be accountable? Will it be the authority as a major provider of funds; or other the customers?

Possibility of corporate status - Colleges are likely to become corporate in the long term. How well prepared will they be? Who will fund them?

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ACRONYMS USED IN THIS MENDIP PAPER

AFE	Advanced Further Education
DENI	Department of Education for Northern Ireland
DES	Department of Education and Science
ERA	Education Reform Act
FE	Further Education
FTE	Full-Time Equivalent
GERBIL	Great Education Reform Bill
HE	Higher Education
ILEA	Inner London Education Authority
LEA	Local Education Authority
NAFE	Non-advanced further education
PCFC	Polytechnics and Colleges Funding Council
S	Section (of the Act)
SED	Scottish Education Department
WO	Welsh Office

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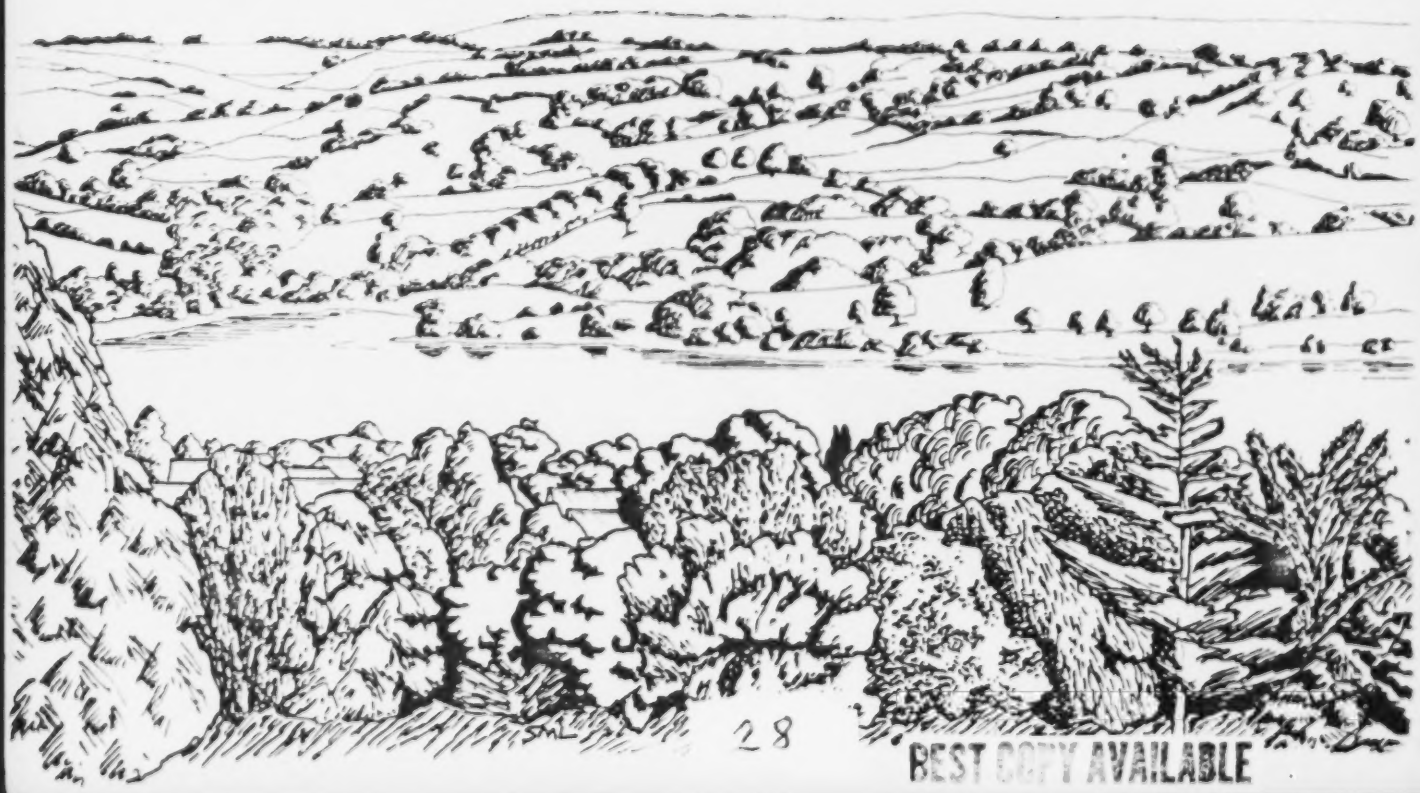

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